

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Petition of	)	
	)	
<b>La Plata County</b>	)	MB Docket Nos. 12-1, 16-366, 16-367,
	)	16-368 and 16-369
	)	
For Modification of the Television Market	)	File No. CSR- 8927-A
of Station KDVR (FOX), Channel 31	)	
Denver, Colorado with Respect to DISH	)	
Network and DIRECTV	)	
	)	
For the Modification of the Television	)	File No. CSR-8928-A
Market of Station KCNC (CBS), Channel	)	
4 Denver, Colorado with Respect to DISH	)	
Network and DIRECTV	)	
	)	
For Modification of the Television Market	)	File No. CSR-8929-A
of Station KMGH (ABC), Channel 7	)	
Denver, Colorado with Respect to DISH	)	
Network	)	
	)	
For Modification of the Television Market	)	File No. CSR-8930-A
of Station KUSA (NBC), Channel 9	)	
Denver, Colorado with Respect to DISH	)	
Network	)	

**REPLY TO OPPOSITIONS TO PETITIONS FOR SPECIAL RELIEF**

La Plata County, Colorado (“the County”) hereby provides this consolidated reply to the Opposition to Petitions for Special Relief filed by KOAT Hearst Television, Inc., licensee of ABC affiliate KOAT-TV, Albuquerque, New Mexico (“KOAT”), and KOAB-TV, LLC, licensee of NBC affiliate KOB(TV), Albuquerque, New Mexico (“KOB”);<sup>1</sup> and the Opposition to Petitions for Special Relief filed by LIN of New Mexico, LLC and LIN of Colorado, LLC, on

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<sup>1</sup> See KOAT Hearst Television Inc., and KOB-TV, LLC, *Opposition to Petitions for Special Relief*, File Nos. CSR-8929A and CSR-8930-A (Nov. 22, 2016)(“*Hearst Opposition*”).

behalf of the Albuquerque-Santa Fe DMA licensees of CBS affiliate KREZ-TV and FOX affiliate KREZ-LD<sup>2</sup> (together “the Albuquerque Stations”). The Albuquerque Stations ask the Commission to dismiss the County’s request to modify the television markets of KDVR (FOX), KMGH (ABC), KUSA (NBC) and KCNC (CBS) to include La Plata County in southwest Colorado with respect to satellite TV providers DISH and DIRECTV.<sup>3</sup> The Oppositions are nothing more than an attempt to deny residents of La Plata County the choice to access the in-state local broadcast stations they have long desired alongside their existing local broadcast TV stations. Importantly, nothing in the Petitions seeks to reduce the local market areas of any of the Albuquerque Stations. Granting the Petitions would give long-disenfranchised Coloradans the ability to receive from satellite carriers the local broadcast affiliates from their own state capitol. The Petitions would *not* cause La Plata County residents to lose access to the Albuquerque stations. In requesting that the Commission deny the Petitions, the Albuquerque Stations seek to undermine Congress’s goal in enacting the STELA Reauthorization Act of 2014 (“STELAR”) of helping consumers access in-state content from their satellite carriers. For the reasons discussed herein, the Commission should deny the Oppositions and expeditiously grant the County’s Petitions.

**I. THE ALBUQUERQUE STATIONS SEEK TO FRUSTRATE CONSUMER CHOICE AND DESIRE**

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<sup>2</sup> See LIN of New Mexico, LLC and LIN of Colorado, LLC, *Opposition to Petitions for Special Relief*, MB Docket Nos. 12-1, 16-367 and 16-366 (Nov. 22, 2016) (“*LIN Opposition*”).

<sup>3</sup> See *Petition for Special Relief of La Plata County, Colorado for KDVR (FOX)*, MB Docket No. 12-1 (Oct. 28, 2016); *Petition for Special Relief of La Plata County, Colorado for KCNC (CBS)*, MB Docket No. 12-1 (Oct. 28, 2016); *Petition for Special Relief of La Plata County, Colorado for KMGH (ABC)*, MB Docket No. 12-1 (Oct. 28, 2016); *Petition for Special Relief of La Plata County, Colorado for KUSA (NBC)*, MB Docket No. 12-1 (Oct. 28, 2016) (together, “the Petitions”).

La Plata County has long been assigned by Nielsen to the Albuquerque, New Mexico designated market area (“DMA”). As such, the County has been “orphaned” by Nielsen due to its assignment to an out-of-state DMA and consumers have been deprived of the ability to receive from a satellite carrier in-state television broadcast stations. Consumers in the County have up until now been unable to receive from a satellite carrier important programming relevant to their lives as citizens of the State of Colorado, including news from their own state capitol, and sports fans in the County have had far fewer opportunities to enjoy televised sporting events such as Denver Broncos football games, among other important statewide programming.

One La Plata County resident summed it up well: “Living where we do and only having access to Albuquerque television services essentially disenfranchises us and substantially eliminates our ability to make informed decisions on statewide issues. If we are able to understand and adequately respond on state issues, it is essential that we be given regular access to media that originates in and provides in depth coverage of Colorado government and Colorado issues.”<sup>4</sup>

Another La Plata County resident reflects the enthusiasm expressed by many others as to the prospect of receiving Denver programming: “I am ecstatic to actually find out about local Colorado events, Colorado State Politics, Colorado Weather, Colorado Road Conditions, Colorado sporting events and coverage of teams including Colorado High Schools, Colorado Colleges and Colorado Professional teams. I am a Coloradan and should have the choice to have programming that impacts Colorado not New Mexico.”<sup>5</sup>

As the County demonstrated in its Petitions, the desire of residents of La Plata to gain access to in-state programming has been recognized by the Commission, members of the

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<sup>4</sup> Comments from Bayard Heroy, 1858 CR. 205, Durango, CO 81301 contained in Exhibit I.

<sup>5</sup> Comments by Ryan Cheese, 849 E. 4<sup>th</sup> Ave., Durango, CO 81301 contained in Exhibit I.



Colorado Congressional delegation, and countless consumers who remain frustrated at the inability to receive content relevant to their interests as Colorado residents even after long efforts by the County to find a solution to this issue.<sup>6</sup>

Rather than recognizing the voluminous support for the County's Petitions from both residents and lawmakers and the direct effectuation of the goals of STELAR through grant of the Petitions, the Albuquerque Stations instead attempt to distract from their true motives in vigorously opposing the Petitions: to thwart the ability of local residents to gain access to Denver stations that will serve the needs of consumers in La Plata County. Hearst's own statements shed light on this underlying incentive, as they admit that allowing the requested market modification would "disrupt[] the current economics of the DMA system."<sup>7</sup>

In fact, the surprisingly forceful Oppositions demonstrate that the Albuquerque Stations are in fact greatly concerned about losing viewership to a Denver station that can better serve the needs of La Plata viewers by providing the types of Colorado-focused content they desire. The Oppositions provide some examples of coverage of issues or events related to Durango, Colorado in an effort to prove that these stations are covering issues of interest to La Plata viewers.<sup>8</sup> But the whole concept of the STELAR updates to the market modification process was to recognize that what consumers view as local programming is not limited merely to what happens down the street or on the other side of town. Rather, consumers want a choice to be able to access content that is relevant to their lives as citizens of a state – in this case, the State of Colorado. And, as the Albuquerque Stations well know, if their content was so compelling and

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<sup>6</sup> See Petitions at 3-4, Exhibits I-J.

<sup>7</sup> *Hearst Opposition* at 16-17.

<sup>8</sup> See *LIN Opposition* at 5-7; *Hearst Opposition* at Exhibit A & Attachment 1.

relevant to the needs of La Plata County viewers, there would not be the outcry from County residents seeking access to the Denver stations detailed in the Petitions.<sup>9</sup> In fact, it is precisely because the needs of county residents have been unmet by the Albuquerque Stations for so long that the County felt compelled to file its Petitions. The chorus of Congressional support contained in the County's Petitions further illustrates how relevant the Denver stations are to County residents. Three members of the Colorado Congressional delegation aptly noted that the Petitions are "the result of years of work by the county and its residents who have demanded access to in-state television programming for local news, weather, and sports."<sup>10</sup>

Further, despite Hearst's disingenuous assertions, the County's Petitions will not "result in La Plata County being removed from the Albuquerque-Santa Fe DMA."<sup>11</sup> The Petitions would do no more than add La Plata County to the local market of KDVR (FOX), KMGH (ABC), KUSA (NBC) and KCNC (CBS), consistent with the way the market modification process has worked since its inception. This result will only give consumer *more* access, and the ability to choose content relevant to their interests as Colorado residents. If La Plata County residents want to continue watching the Albuquerque Stations on the satellite carrier of their choice, the County's request would not impact their ability to do so. The Commission should see through the transparent attempt of the Albuquerque Stations to impose a stranglehold on the La Plata market and expeditiously grant the County's Petitions.

The Hearst Opposition also attempts to mislead the Commission in suggesting that the Denver station's willingness to negotiate with satellite carriers for carriage of their "local, in-

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<sup>9</sup> See *Petitions* at Exhibit I.

<sup>10</sup> *Id.* at Exhibit J.

<sup>11</sup> *Hearst Opposition* at 1.

state duplicative programming” means the relief granted in the Petitions is somehow unnecessary.<sup>12</sup> To the contrary, the Petitions seek to modify the local market of the Denver stations so that La Plata County can receive the full signal of each station, 24 hours a day – again, consistent with the way market modifications have always worked. And in making this argument, the Hearst Opposition creates a false equivalency. The mere fact that a station in Denver may be willing to grant access to that programming for which it holds all of the rights necessary to grant retransmission to out-of-market areas is not the same as the underlying purpose of statutory market modification. In creating this new satellite market modification process in STELA, Congress reaffirmed the basis for the original market modification process – that in certain circumstances there is a clear public interest need to assign a county to multiple DMAs (and thus give consumers access to multiple broadcast television stations) because of the unique content and value stations in each DMA provide. If the Commission denies these Petitions based on this rationale, then it would effectively undermine the market modification process going forward.

The claims of the Hearst Opposition on this point also fail when the Commission looks at the long history of the attempts by La Plata County (and its sister county, Montezuma) to find a solution to this problem. As noted above, the filing of these Petitions comes after the County tried time and time again to find a pathway to giving residents access to all of the types of in-state Colorado programming that are relevant to their economic, political, and social lives as citizens of the State of Colorado. And it is likely that La Plata County consumers do not want to receive a satellite channel that is blacked out several hours per day, and the satellite carriers may

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<sup>12</sup> *Hearst Opposition* at 3.



not have sufficient spot beam capacity to carry a special, blacked-out feed of the Denver stations just for La Plata County.

## **II. THE OPPOSITIONS ATTEMPT TO UNDERMINE STELAR'S ORPHAN COUNTY RELIEF PATH**

In passing STELAR, Congress recognized the plight of orphan counties and the negative effect of satellite subscribers in those communities being unable to subscribe to local broadcast stations originating in their own states from their preferred satellite carrier.<sup>13</sup> Congress empowered the Commission to modify a television broadcast station's local market when it would, among other things, "address satellite subscribers' inability to receive in-state programming in certain areas."<sup>14</sup> And, the Commission recognized that "[s]ignificantly, in the STELAR, Congress included a factor requiring consideration of access to television stations that are located in the same state as the community considered for modification."<sup>15</sup> That this was the only substantive change that Congress made to the market modification process it borrowed from cable should make clear the importance of this new factor.

Despite this clear Congressional directive, the Albuquerque Stations attempt to diminish the significance of STELAR by asserting that the County's location in the state of Colorado somehow should not have an impact on the Commission's review of the market modification request. Hearst goes so far as to proclaim that the County's request to access the Denver stations

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<sup>13</sup> See In the Matter of Amendment to the Commission's Rules Concerning Market Modification; Implementation of Section 102 of the STELA Reauthorization Act of 2014, *Report and Order*, MB Docket No. 15-71, ¶ 1 (Sept. 2, 2015) ("*Market Modification Order*") ("These rules implement an important provision in the Satellite Television Extension and Localism Act Reauthorization Act of 2014 ("STELAR") to promote carriage of in-state and other relevant local television programming.").

<sup>14</sup> *Id.* ¶ 3.

<sup>15</sup> *Id.* ¶ 1.

should not be granted because “[i]n-state broadcast stations providing *state-related* programming, of course, do not necessarily provide *localized* programming.”<sup>16</sup> The desire of the Albuquerque Stations to prevent La Plata County residents from accessing programming relevant to their state of residence is squarely at odds with STELAR and the Commission’s Market Modification Order, which expressly sought to permit market modifications to remedy these very situations. This argument also conflates two terms that are not synonymous. To claim that “localized” and “in-state” mean effectively the same thing is to ignore the clear words of the statute and the documented intent of Congress in creating the satellite market modification process.

Indeed, as the Commission noted: “Section 102 of the STELAR, and the Commission’s actions in this Report and Order, seek to establish a market modification process for the satellite carriage context and, to the extent possible, *address satellite subscribers’ inability to receive in-state programming in certain areas*, sometimes called ‘orphan counties.’”<sup>17</sup> And, the issue of orphan counties is why the Commission added the new “in-state factor” that “favors any market modification that would promote consumers’ access to an in-state station.”<sup>18</sup> It is also why the Commission explained that this factor “serves as an enhancement” in the Commission’s evaluation of market modification requests.

When describing the evidentiary burden for satisfying the new “in-state” factor, the Commission expressly stated that “a petitioner will be afforded credit for satisfying this factor simply by showing that the involved station is licensed to a community within the same state as

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<sup>16</sup> *Hearst Opposition* at 4.

<sup>17</sup> *Market Modification Order* ¶ 3 (*emphasis added*).

<sup>18</sup> *Id.* ¶ 4.



the new community”<sup>19</sup> In a departure from the market modification rules in the cable context, the Commission recognized that providing county governments the ability to file such requests on behalf of residents was intended “to empower orphan counties to eliminate certain legal barriers which may have deprived local residents of the cultural, sports, political and local news relevant to the state in which they reside.” Fulfilling this Congressional and Commission directive is exactly what La Plata County is hoping to accomplish with its pending Petitions.

The Albuquerque Stations attempt to dismiss the significance of the “in-state” factor entirely in their Oppositions by claiming that in-state programming from Denver stations is not relevant to the Commission’s review of the Petitions. This position ignores the intent of Congress in passing STELAR and of the Commission in promulgating the market modification rules. The Commission should not allow the Albuquerque Stations to deny La Plata County residents access to the in-state programming they seek, and indeed that Congress intended to provide them with in passing STELAR.

### **III. THE PETITIONS SATISFY THE STATUTORY FACTORS AND EVIDENTIARY REQUIREMENTS**

As required by STELAR, the Commission determines whether to grant a market modification based on consideration of five statutory factors. These factors reflect the four factors previously applicable to market modifications in the cable context, plus the additional in-state factor discussed above. The Oppositions erroneously claim that the Petitions should be dismissed because La Plata County failed to provide the required showing to support grant of the requested Petition, explaining that the County relied on only a singular factor (the “in-state” factor) to justify the market modification request. The Oppositions ignore the evidence provided

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<sup>19</sup> *Id.* ¶ 18.

by La Plata County to address the five statutory factors enumerated by the Commission in the Market Modification Order, and attempt to dismiss the significance of the in-state factor entirely.

As an initial matter, each of the five statutory factors was addressed by La Plata County in its Petitions.<sup>20</sup> Regarding the in-state factor, which the Commission has explained receives “enhanced weight,” the Petitions explained that because the County is assigned to the Albuquerque, New Mexico DMA, all of its local broadcast content available by satellite is oriented to the interests of a different state. As the La Plata County Commissioners have previously explained, “La Plata County residents feel disenfranchised and disadvantaged by the lack of access to Denver programming,” and want to receive “news, as well as educational, sports and other programming, from our own state capitol.”<sup>21</sup> The Petitions therefore satisfied the third factor by delivering in-state local broadcast station from Denver, the Colorado state capital, over DISH’s satellite TV service to consumers in the County who have previously been unable to receive it from DISH.

In addition, the first, second, and fifth factors all relate to historical or current opportunity to view the Station in the County (the first and second factors), and whether the residents of the County have availed themselves of such opportunities (the fifth factor). Since the purpose of STELAR was to facilitate access to in-state broadcast programming, the Petitions explained that neither a lack of historical carriage or coverage, nor a commensurate lack of historical viewing patterns for the Station, should weigh against the requested market modification. Because the County has long been assigned by Nielsen to an out-of-state DMA, STELAR’s market modification provision marks the first opportunity for the County to receive the Station’s signal

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<sup>20</sup> See Petitions at 2-6.

<sup>21</sup> Letter from La Plata County Board of County Commissioners to FCC, MB Docket No. 10-148 (Aug. 3, 2010).

over satellite. Given this lack of historical carriage, residents of the County have had scant opportunity to develop any viewing patterns for the Station. It is precisely this lack of opportunity to view, via satellite TV, an in-state network-affiliated station that the Petitions intended to remedy. And, the Petitions explained that regarding the fourth factor, the County is unaware of another in-state local broadcast station carried by a satellite provider in the County that offers Denver- and Colorado-oriented news coverage of issues of concern to residents of the County.

In addition, the County provided the evidentiary showings necessary to support the market modification request. The Oppositions claim that the Petitions failed to provide evidence like shopping and labor patterns, MVPD line up cards showing carriage, and published audience ratings, which they claim is “critical to consideration of the several statutory factors.”<sup>22</sup> This position ignores that the County addressed each required statutory factor, and overstates the omission of some minor information that was not provided because, as explained above, it was not relevant or available. It also ignores the weight of the evidence contained in the Petitions, which is sufficient for the Commission to make a determination about the County’s request. Given that every statutory factor was considered in the Petitions, there can be no argument that the Petitions are procedurally defective.

As is common for multi-factor tests, the Commission explained that in the market modification process, “each petition for market modification will turn on the unique facts of the case.”<sup>23</sup> Here, the Commission can look to the clearly articulated Congressional intent regarding the orphan county problem, along with the other information provided in the Petitions, and weigh

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<sup>22</sup> *Hearst Opposition* at 7.

<sup>23</sup> *Market Modification Order* ¶ 18.



the in-state showing in the “enhanced” manner as appropriate. The Oppositions seek to set the bar for fulfilling the statutory factors and submitting the evidentiary requirements so high that no entity petitioning for a market modification could effectuate such action, clearly contravening the intent of Congress in passing STELAR.

#### **IV. CONCLUSION**

For the foregoing reasons, La Plata County urges the Commission to expeditiously grant its Petitions.

Respectfully submitted,

LA PLATA COUNTY  
BOARD OF COUNTY COMMISSIONERS

A handwritten signature in black ink, appearing to read 'Brad P. Blake', written over a horizontal line.

Bradford P. Blake, Chair

December 13, 2016

## CERTIFICATE OF SERVICE

I, Sarah Jacobson, do hereby certify that on December 13, 2016, I caused copies of the foregoing Opposition to Petitions for Special Relief to be delivered to the following via U.S. First Class mail:

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KWBQ  
13 Broadcast Plaza SW  
Albuquerque, NM 87104

KASY-TV  
13 Broadcast Plaza SW  
Albuquerque, NM 87104

KQDF-LP  
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Albuquerque, NM 87107

KAZQ  
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KBIM-TV  
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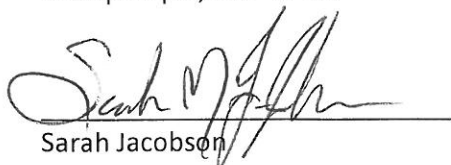
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